

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

KELVIN GOULD (#1021638),

Petitioner,

v.

CIVIL ACTION NO. 2:19cv166

HAROLD W. CLARKE,

Respondent.

REPORT & RECOMMENDATION FOR DISMISSAL

The Court received and filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 submitted by Petitioner Kelvin Gould (“Petitioner” or “Gould”), along with the \$5.00 filing fee. (ECF Nos. 3, 7). The petition alleges 19 various claims pertaining to convictions in the Newport News Circuit Court in February 2010 for object sexual penetration, aggravated sexual battery and two counts of indecent liberties. As a result of these convictions, Petitioner was sentenced to serve a total of 15 years in prison.

The petition appears to challenge the same convictions and sentences that Gould previously challenged in this court under Civil Action Nos. 2:12cv631 and 2:14cv492. Thus, Gould’s current petition falls under the successive petition provisions of the federal habeas statute. Pursuant to 28 U.S.C. § 2244(b)(3)(A), “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” This court has not received an order from the Court of Appeals for the Fourth Circuit authorizing the consideration of Petitioner’s application for a writ of habeas corpus, nor does it appear from any of the filings that Petitioner

has moved for such an order. Therefore, this court is precluded from considering Petitioner's application for a writ of habeas corpus.

Because Gould raises many of the same errors he previously raised in two prior petitions without seeking leave from the Fourth Circuit, the undersigned RECOMMENDS that Gould's petition be DISMISSED for lack of jurisdiction as successive, and for his failure to comply with previous Orders of this court.

By copy of this Report and Recommendation, the Petitioner is notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Petitioner may file with the Clerk written objections to the foregoing findings and recommendation within fourteen (14) days from the date of mailing of this Report to the objecting party, 28 U.S.C. § 636(b)(1)(C), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure.

2. A district judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

Petitioner is further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of the right to appeal from a judgment of this Court based on such findings and recommendations. Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is DIRECTED to mail a copy of this Report and Recommendation to the Petitioner at the address on file with the court.



Douglas E. Miller
United States Magistrate Judge

DOUGLAS E. MILLER
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia
June 3, 2019

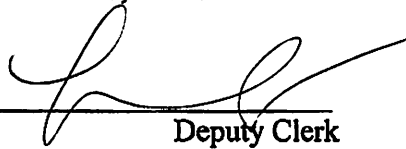
Clerk's Mailing Certificate

A copy of the foregoing was mailed this date to the Petitioner at the addresses listed below:

Kelvin Gould, #1021638
Greensville Correctional Center
901 Corrections Way
Jarratt, VA 23870

Fernando Galindo, Clerk

By

A handwritten signature in black ink, appearing to read 'Fernando Galindo', written over a horizontal line.

Deputy Clerk

June 3, 2019